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Patrick Turner  
Attorney

OFFICE OF THE  
September 8, 2000  
EXECUTIVE SECRETARY

**VIA HAND DELIVERY**

Mr. David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

Re: *Tariff Filing of BellSouth Telecommunications, Inc. to Reduce  
Grouping Rates in Rate Group 5 and to Implement a 3% Late Payment  
Charge*  
Docket No. 00-00041

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s List of Facts Relevant to the Two Issues Being Considered in this Matter and Memorandum in Support of the List. Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Patrick W. Turner

PWT/jem

Enclosure

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc.'s Tariff Filing to Reduce Grouping Rates in Rate Group 5 and to Implement a 3% Late Charge*

Docket No. 00-00041

**BELLSOUTH TELECOMMUNICATIONS INC.'S**  
**LIST OF FACTS RELEVANT TO THE TWO ISSUES BEING**  
**CONSIDERED IN THIS MATTER**  
**AND MEMORANDUM IN SUPPORT OF THE LIST**

In accordance with the Notice of Filing dated September 1, 2000, BellSouth Telecommunications, Inc. respectfully submits this List of Facts Relevant to the Two Issues being Considered in this Matter and Memorandum in Support of the List. Additionally, a proposed Order on Reconsideration for the Authority's consideration is attached hereto as Exhibit A.

**I. LIST OF FACTS RELEVANT TO THE TWO ISSUES BEING CONSIDERED**

As noted in Section II below, the TRA is not required to make exhaustive factual findings in dockets which, like this one, only involve issues of law. BellSouth, however, is confident that an Order incorporating the following findings of fact -- none of which can be legitimately disputed by the CAD -- would clearly more than satisfy the statutory provisions addressing the form and content of a final agency order. *See generally* T.C.A. §4-5-314.

**A. Generally**

1. Before BellSouth filed the tariff that is the subject of this docket, BellSouth's Private Line Services Tariff allowed the Company to apply a 1.5% late-payment charge "to each subscriber's bill (including amounts billed in

accordance with the Company's Billing and Collection Services Tariff) when the previous month's bill has not been paid prior to the next billing date." See BellSouth's Private Line Services Tariff at B2.4.1.E.<sup>1</sup>

2. BellSouth's General Subscriber Services Tariff did not provide for late-payment charges prior to this filing.

3. The tariff filing at issue in this docket increases the late-payment charge in the Private Line Services Tariff and adds a late-payment charge to the General Subscribers Services Tariff. See Tariff at A2.4.3.C; B2.4.1.E.

**B. Issue No. 2<sup>2</sup>**

4. In addition to charges for services provided by BellSouth, a bill BellSouth sends to its subscribers may include charges for telecommunications-related services provided by third parties in accordance with the terms and conditions of BellSouth's tariffs. See *generally* General Subscriber Services Tariff A37; Access Services Tariff E8.

5. Even when it bills for services provided by third parties, BellSouth does not send bills to persons or entities who are not subscribers to BellSouth's service. See General Subscriber Services Tariff A37.1.1.A ("In order for [BellSouth] to bill for these services, the end user must be a subscriber of [BellSouth] who receives a monthly telephone bill."). See *also* E8.2.1.B.2.e.

6. Thus any person or entity that receives a BellSouth bill containing charges for services provided by third parties is a BellSouth subscriber.

7. When BellSouth bills its end users for services provided by third parties, BellSouth purchases the accounts receivable arising from such charges from those third parties and then includes those charges on the bill it sends its own subscribers. See Access Tariff at E8.2.1.B.2.g ("[BellSouth] will provide Bill

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<sup>1</sup> All tariffs cited in this document are on file with the Tennessee Regulatory Authority, are binding on BellSouth and its subscribers, and have the effect of law. See *GBM Communications, Inc. v. United Inter-Mountain Tel. Co.*, 723 S.W.2d 109, 112 (Tenn. Ct. App. 1986). The CAD cannot legitimately dispute the fact that these tariffs say what they say.

<sup>2</sup> Although the "third-party charges" issue is the second of the two agreed-upon legal issues in this docket, BellSouth will first address the facts relevant to the TRA's determination of its statutory authority to approve a late payment charge that will apply to charges for services provided by third parties and billed by BellSouth.

Processing Service only on the condition that it purchase the accounts receivable from the [interexchange carrier] . . . ."; General Subscriber Services Tariff at A37.1.1.B ("[BellSouth] will remit payment to the [third-party service provider] each month based upon the total revenue billed to end users less [BellSouth's] charges, any uncollectibles, and any adjustments."); *Id.* at A37.1.2.E ("Typically, [BellSouth] will be paying out the billed amount to the [third-party service provider] prior to receiving payment from the end user.").

8. The express language of BellSouth's tariff provides that the late-payment charge will apply to all charges appearing on BellSouth's bill, including third-party charges. See Tariff at A2.4.3.C; B2.4.1.E.

**C. Issue No. 1**

9. BellSouth is operating under an approved price regulation plan. See CAD's Discovery Update (filed June 2, 2000) at 1 ("The Consumer Advocate Division admits that BellSouth is operating pursuant to a prospective price regulation plan effective on December 9, 1998.").

10. If BellSouth's tariff filing is approved, the pertinent language in BellSouth's tariffs will provide that:

A late payment charge of three percent (3.00%) of the unpaid balance will be applied to each subscriber's bill (including amounts billed in accordance with the Company's Billing and Collections Services Tariff) when the previous month's bill has not been paid in full prior to the next billing date. Charges for payments that are overdue on state government accounts will be applied consistent with the applicable state statutes.

See Tariff at A2.4.3.C; B2.4.1.E.

11. As a result, a late-payment charge of 3.00% of the unpaid balance of all charges that appear on BellSouth's bill will be applied when the previous month's bill has not been paid in full prior to the next billing date.

**D. Statutory Price Cap**

12. BellSouth's tariff filing package includes proprietary information which sets forth the aggregate annual revenue increase resulting from the late-

payment charge provisions in its tariff. See Proprietary Portion of Tariff Filing Package.<sup>3</sup>

13. This package also sets forth the aggregate annual revenue reduction resulting from the grouping reductions. *Id.*

14. This package indicates that after taking these changes into effect, the aggregate revenues generated by the rates BellSouth charges for its telecommunications services is less than the revenue that would be generated by the maximum rates permitted under BellSouth's approved price regulation plan. *Id.* See also T.C.A. §65-5-209(e).

#### **E. Discrimination**

15. In addition to these late-payment provisions, BellSouth's tariff also reduces the rate for grouping service in Rate Group 5. See, e.g., Tariff Filing Package at Revised Pages 58.1; 59; 59.1; 60; 61.1; 62; 62.0.1; 64; and 64.1.

16. Pursuant to approved tariffs which have been in effect for many years, BellSouth provides service within five different Rate Groups. See, e.g., BellSouth's General Subscriber Services Tariff A3.2.1.A.1 (effective since 1991).

17. Rate Group 1 is composed of local calling areas with up to 12,000 lines; Rate Group 2 is composed of local calling areas with 12,001 to 27,000 lines; Rate Group 3 is composed of local calling areas with 27,001 to 85,000 lines; Rate Group 4 is composed of local calling areas with 85,001 to 300,000 lines, and Rate Group 5 is composed of local calling areas with more than 300,000 lines. *Id.*

18. While all subscribers within a given Rate Group pay the same rates for the same service, the price for a given service varies across rate groups.

19. For example, BellSouth provides flat rate residential service at a monthly rate of \$7.55 within Rate Group 1; \$8.50 within Rate Group 2; \$9.05 within Rate Group 3; \$11.85 within Rate Group 4; and \$12.15 within Rate Group 5. *Id.*

20. Similarly, even before this filing, BellSouth's rates for its grouping service varied across its five Rate Groups. The rate for hunting in conjunction with an individual line or trunk, for example, was \$20.29 in Rate Group

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<sup>3</sup> Such information has been made available to the TRA Staff and the CAD pursuant to the terms of the Protective Order entered in this proceeding.

1; \$23.10 in Rate Group 2; \$24.56 in Rate Group 3; \$29.29 in Rate Group 4; and \$29.78 in Rate Group 5. See BellSouth's General Subscriber Services Tariff A3.19.2.A.1.

21. BellSouth's tariff filing reduces the rates BellSouth will charge for grouping services within Rate Group 5. See, e.g., Tariff Filing Package at Revised Pages 58.1; 59; 59.1; 60; 61.1; 62; 62.0.1; 64; and 64.1.

22. Under this tariff, therefore, all of BellSouth's customers in Rate Group 5 will pay the same, lower rate for hunting.

## **II. LEGAL STANDARD APPLICABLE TO FINDINGS OF FACT**

In *CF Industries v. Tennessee Public Service Commission*, 599 S.W.2d 536, 541 (Tenn. 1980), the Supreme Court of Tennessee discussed the detail required in an agency's findings of fact:

The sufficiency of an agency's findings of fact must be measured against the nature of the controversy and the intensity of the factual dispute. It is obvious that where there is no disputed issue of fact and the sole question before the agency is the proper conclusion to be drawn from the undisputed facts and the application of the correct legal rules, the record need not be burdened with detailed findings of fact. In such a case the facts need only be recited.

In that case, the Supreme Court of Tennessee ruled that the Public Service Commission acted appropriately in declining to address the factual "issues" presented in a "15-point proposed finding of fact [a party to the docket] filed with the Commission." *Id.* at 541. The Court supported its decision by noting that the proposed findings: had "no material bearing on any issue;" had "no controlling significance," were "argumentative and not of controlling significance," and dealt with "the results of the requested [rate] increase" when "[a]ll concerned knew the

end results; there was no basic dispute and its inclusion in the finding would have served no useful purpose." *Id.* at 541-42. The Court concluded by stating that:

In summary, the proposed findings incorporate agreed facts, background information, results and argument. Pertinent and essential to this issue are only those relating to cost of service data vis-à-vis intrinsic value. These call for conclusions of law and, as to them, the findings and conclusions contain full discussion.

*Id.* at 542. The TRA, therefore, is not required to determine every factual issue the CAD asks it to determine. Instead, it is only required to determine the facts that are material to the outcome of this docket. *Cf. Byrd v. Hall*, 847 S.W.2d 208, 212 (Tenn. 1993)("Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.").<sup>4</sup>

### III. DISCUSSION OF FACTS RELEVANT TO ISSUE NO. 2

Issue No. 2 requires the TRA to determine whether it has the statutory authority to approve a late payment charge that will apply to charges for services that are provided by third parties and billed by BellSouth. This is an issue of law. *See Sanifill of Tennessee, Inc. v. Tennessee Solid Waste Disposal Control Board*,

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<sup>4</sup> Although this docket does not contain a motion for summary judgment, this holding is nonetheless instructive. Factual disputes that are not relevant have no place at any stage of a legal proceeding: just as irrelevant factual disputes are not considered in determining a motion for summary judgment, irrelevant factual disputes are not allowed to be presented to a jury at trial or to an agency during a contested case hearing. *See* Tenn. R. Evid. 401 (defining "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence"); Tenn. R. Evid. 402 ("Evidence that is not relevant is not admissible.").

907 S.W.2d 807, 809 (Tenn. 1995)("the issue of whether the Tennessee statutory scheme expressly or implicitly grants authority to the Department [of Environment and Conservation] to regulate the service area from which a solid waste disposal facility may receive solid waste is a question of law, not of fact . . . ."). *Accord* Order Reversing Initial Order and Approving Tariff at 3 (noting that "the Pre-Hearing Officer determined that the two agreed-upon prime issues in this matter were essentially legal in nature and that resolution of threshold questions of law would dictate the direction of this proceeding, and may determine the result of this docket."). The only fact that is truly essential to the determination of Issue No. 2, therefore, is the fact that BellSouth's late payment charge will apply to charges for services that are provided by third parties and that are billed by BellSouth. The CAD simply cannot dispute this fact, which is evident from the plain language of the tariff. In fact, it is this very fact that is the predicate for the CAD's insertion of Issue No. 2 into this proceeding. In light of this undisputed fact, all that remains to resolve Issue No. 2 is to apply the law to this undisputed fact to determine whether the TRA has the statutory authority to approve such a charge. As explained fully in the briefs BellSouth has submitted in this docket, the TRA has such statutory authority.<sup>5</sup>

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<sup>5</sup> In addition to the arguments presented in those briefs, BellSouth also notes that even before BellSouth filed the tariff at issue in this docket, BellSouth's Private Line tariff provided for a 1.5% late-payment charge that applied "to each subscriber's bill (including amounts billed in accordance with the Company's Billing and Collection Services Tariff) when the previous month's bill has not been paid prior to the next billing date." See Private Line Services Tariff at B2.4.1.E



The CAD's reliance on section 65-4-125(b) in arguing that the Authority does not have jurisdiction to approve the late-payment provisions in BellSouth's tariff is misplaced. Section 65-4-125(b) provides that:

No telecommunications service provider, and no person acting on behalf of any telecommunications service provider, shall bill and collect from any subscriber to telecommunications services any charges for services to which the provider or person acting on behalf of the provider knows or reasonably should know such subscriber has not subscribed, or any amount in excess of that specified in the tariff or contract governing the charges for such services.

The CAD first claims that BellSouth's tariff violates this statute by permitting BellSouth to charge for a service it knows or should know a subscriber has not ordered. This statute, however, authorizes the TRA to "adopt rules implementing the provisions of this section," *see* T.C.A. §65-4-125(d), and the TRA has promulgated rules which apply to BellSouth and which are designed to ensure that all charges appearing on the bill -- including charges for services provided by third parties -- are authorized. *See* T.R.A. Rule Chapter 1220-4-2-.58.<sup>6</sup> The CAD also claims that BellSouth's tariff violates this statute by allowing BellSouth to charge

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(emphasis added). Approving a tariff that applies a late payment charge to amounts billed by BellSouth for services provided by third parties, therefore, is a bridge that has been crossed before.

<sup>6</sup> The CAD also seems to argue that this statute would require BellSouth to take steps to ensure not only that a subscriber has ordered a particular service, but also that the subscriber has specifically agreed to pay the new tarified late-payment charge with regard to that service. This argument is not persuasive. Once it has been confirmed that a subscriber has ordered a service, all charges, terms, and conditions set forth in the tariff apply. *See GBM Communications, Inc. v. United Inter-Mountain Tel. Co.*, 723 S.W.2d 109, 112 (Tenn. Ct. App. 1986) ("The published tariffs of a common carrier are binding upon the carrier and its customers

an amount in excess of that specified in the tariff. This is a perplexing argument, however, given that once approved, the late-payment charge will be specified in BellSouth's tariff.

As a matter of law, therefore, the TRA has the statutory authority to approve a late-payment charge that will apply to the unpaid balance -- including amounts billed in accordance with the Company's Billing and Collections Services Tariff -- when the previous month's bill has not been paid in full prior to the next billing date.

#### **IV. DISCUSSION OF FACTS RELEVANT TO ISSUE NO. 1**

It is undisputed that BellSouth is operating under an approved price regulation plan. See CAD's Discovery Update (filed June 2, 2000) at 1 (admitting that BellSouth "is operating pursuant to a prospective price regulation plan effective on December 9, 1998."). Accordingly, deciding Issue No. 1 requires the TRA to determine whether the late payment charge is a charge for a telecommunications service and, if it is, whether it is a charge for a basic or non-basic service. This requires the TRA to interpret section 65-5-208 of the Tennessee Code Annotated, and the interpretation of a statute is a matter of law. See *Cape Fear Paging Co. v. Huddleston*, 937 S.W.2d 787, 788 (Tenn. 1996) ("The construction of statutes and of regulations promulgated pursuant to statutes and the application of those statutes and regulations to undisputed facts are questions

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and have the effect of law. The provisions of the tariffs should govern the parties.").

of law."). *Accord* Order Reversing Initial Order and Approving Tariff at 3 (noting that "the Pre-Hearing Officer determined that the two agreed-upon prime issues in this matter were essentially legal in nature and that resolution of threshold questions of law would dictate the direction of this proceeding, and may determine the result of this docket."). The relevant and material facts to which this statute must be applied in this docket simply are not in dispute. The language of BellSouth's tariff is plain and unambiguous: the late-payment charge will apply to any unpaid balance when the previous month's bill has not been paid in full prior to the next billing date. Application of the price regulation statutes to this plain and unambiguous language is a matter of law.

The CAD has asked the TRA to determine whether BellSouth's rates that existed on June 6, 1995 somehow included the costs of late payments as of some point in time. The TRA should decline the CAD's request because such "facts" have no material bearing on any issue and they have no controlling significance in this docket. *See CF Industries v. Tennessee Public Service Commission*, 599 S.W.2d 536, 541 (Tenn. 1980). As explained more thoroughly at pages 10 through 16 of BellSouth's initial brief, BellSouth's rates on the effective date of its approved price regulation plan are affordable<sup>7</sup> as a matter of law. *See* T.C.A. §65-5-209(a). Moreover, BellSouth's rates continue to be affordable -- and, therefore,

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<sup>7</sup> Because these rates are affordable, they are also just and reasonable. *See* T.C.A. §65-5-209(a) ("Rates for telecommunications services are just and reasonable when they are determined to be affordable as set forth in this section.").

just and reasonable -- as long as they generate aggregate revenues that "do not exceed the aggregate revenues generated by the maximum rates permitted by the price regulation plan." T.C.A. §65-5-209(e). BellSouth's late payment charge, combined with the accompanying hunting rate reductions, results in aggregate revenues that are less than the aggregate revenues generated by the maximum rates permitted by BellSouth's price regulation plan. BellSouth's rates, therefore, continue to be just, reasonable, and affordable, and the CAD's attempts to divert attention from this simple fact by reminiscing about rate of return proceedings conducted in bygone years are irrelevant and improper. *See BellSouth Telecom., Inc. v. Greer*, 972 S.W.2d 663, 681-82 (Tenn. Ct. App. 1997)(summarily rejecting AT&T's argument that in auditing BellSouth's 3.01 report under T.C.A. §65-5-209(c) and (j), the Public Service Commission "did not complete its task because it failed to review each of BellSouth's rates and tariffs to determine whether they were affordable and non-discriminatory." ).<sup>8</sup>

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<sup>8</sup> In discussing the late payment charges CLECs operating in Tennessee apply to their bills, the CAD states "if the CLEC chose to set its basic local exchange service rate so that it did not include the expenses due to late payment charges, so that its actual service rates would be lower, it is free to do so." *See Reply to BellSouth's Response to Tennessee Consumers's (sic) Second Petition for Stay of Effectiveness and Petition for Reconsideration at 9.* The truth of the matter, however, is that neither the CAD, the TRA, nor anyone other than the CLECs themselves knows how the CLECs went about setting their rates. If the CAD truly believes its own claims that BellSouth's late payment charges constitute unfair double recovery, that they constitute unauthorized charges, and that they constitute extortion, why is the CAD not representing the interests of all Tennessee consumers by making the exact same claims against the CLECs? The answer is simple: because the CAD's allegations in this docket are nothing more than a

## **V. DISCUSSION OF FACTS RELEVANT TO ISSUES THE CAD IMPROPERLY AND BELATEDLY HAS ATTEMPTED TO INJECT INTO THIS DOCKET.**

As noted below, after the TRA issued its Order in this docket, the CAD belatedly and improperly attempted to inject additional issues into this proceeding in an effort to delay implementation of a TRA Order with which it does not agree. The CAD's tactics, however, should not prevent the implementation of BellSouth's tariff.

### **A. Compliance With Statutory Price Cap**

Once the TRA has determined as a matter of law that BellSouth's late payment charge is a charge for a non-basic telecommunications service, the only remaining issue is whether BellSouth's tariff complies with the statutory price cap. As an incumbent local exchange company subject to price regulation, BellSouth "may set rates for non-basic services as the company deems appropriate subject to the limitations set forth in subsections (e) and (g)<sup>9</sup> . . . ." Subsection (e), in turn, allows BellSouth to "adjust its rates for basic local exchange telephone services or non-basic services" as long as "its aggregate revenues for basic local exchange services and non-basic services generated by such changes do not exceed the aggregate revenues generated by the maximum rates permitted by the price regulation plan." T.C.A. §65-5-209(e). As noted above, BellSouth's tariff filing

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thinly-veiled attack on BellSouth, and not a bona fide attempt to address some purported injustice.

<sup>9</sup> Subsection (g) applies only to rates for interconnection services provided by BellSouth to other telecommunications services providers. BellSouth's tariff does not apply to interconnection services.

package indicates that after taking into account the revenue effect of this tariff, its aggregate revenues do not exceed the aggregate revenues generated by the maximum rates permitted by its approved price regulation plan.

Although the CAD now claims that "the actual value of the hunting charge reductions and the actual value of the late charge payments are questions of fact not resolved by the August 3, 2000 Order," *see* Reply to BellSouth's Response to Tennessee Consumers's (sic) Petition for Reconsideration at 2 n.5, the CAD did not contest the information set forth in BellSouth's filing package in its Complaint or in the briefs it has filed in this docket. Additionally, the CAD has not submitted affidavits, studies, or any other evidence raising an issue about this information. Having not even alleged that BellSouth has violated the price cap, it seems odd that the CAD should now be heard to complain that the Authority has accepted BellSouth's uncontested filing in this matter.

If the CAD insists that it has factual proof to present regarding this issue, however, BellSouth would not object to the TRA's allowing BellSouth's tariff to go into effect pending a hearing on the sole factual issue of whether BellSouth has complied with the revenue cap set forth in the price regulation statutes. BellSouth, however, strongly objects to any attempts by the CAD to delay the effective date of this tariff on the basis of purported questions of fact that the CAD did not raise until after the entry of the TRA's Order in this docket. Any such delay arguably would set the stage for a company's tariff to be substantially delayed by the belated filing of a complaint alleging questions of "fact" regarding the filing.

**B. Discrimination**

The CAD suggests that BellSouth's reduction of grouping rates is discriminatory, apparently because the grouping rate reductions apply only within Rate Group 5. The TRA and the Public Service Commission, however, have historically approved the establishment of different rates within each of BellSouth's five rate groups.<sup>10</sup> There is nothing discriminatory about this practice, and the CAD has presented nothing to suggest otherwise. *Cf. Consumer Advocate Division v. Greer*, 967 S.W.2d 759, 761 (Tenn. 1998) ("a state agency's interpretation of a statute that the agency is charged to enforce is entitled to great weight in determining legislative intent.").

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.



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<sup>10</sup> As noted above, before BellSouth filed this tariff, customers in Rate Group 5 paid different hunting rates than customers in Rate Groups 4, 3, 2, and 1.

**EXHIBIT A**



BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc.'s Tariff Filing to Reduce Grouping Rates in Rate Group 5 and to Implement a 3% Late Charge*

Docket No. 00-00041

**ORDER ON RECONSIDERATION**

This matter came before the Tennessee Regulatory Authority ("Authority") at a regularly scheduled Authority Conference held on August 29, 2000 to Consider a Petition for Reconsideration and a Petition for Stay of the Authority's *Order Reversing Initial Order and Approving Tariff* ("the Order"). The Order was filed on August 3, 2000 and follows this Order as Attachment A. The *Initial Order Relative to Objection to Second Report and Recommendation* ("Initial Order") of the Pre-Hearing Officer was filed on July 3, 2000 and follows this Order as Attachment A. The *Second Report and Recommendation of Pre-Hearing Officer* ("Second Report") was filed on May 26, 2000 and is attached to Attachment A as Exhibit 1.

**BACKGROUND**

On January 21, 2000, BellSouth Telecommunications, Inc. ("BellSouth") filed a tariff to reduce the grouping rates in Rate Group 5 (Memphis and Nashville metropolitan areas) and to impose a three percent (3%) late charge on the unpaid balances of all customers' bills. At the February 15, 2000 Authority Conference,

the Directors appointed a Pre-Hearing Officer to prepare this matter for hearing. A Pre-Hearing Conference was held on March 15, 2000.

As a consequence of this first Pre-Hearing Conference, BellSouth and the Consumer Advocate Division jointly submitted the following prime issues on March 22, 2000, which were approved by the Directors at the April 11, 2000 Authority Conference:

1. Does the late-payment charge proposed in BellSouth's Tariff 00-00041 constitute an impermissible rate increase for basic local exchange service under Tenn. Code Ann. § 65-5-209?
2. When BellSouth bills for services on behalf of other telecommunications companies, does it have a right, independent of its agreement with the telecommunications companies for which it bills, to charge its proposed late-payment charge to the consumer, in the event a consumer pays the bill late?

To permit oral argument as to objections to discovery and motions to compel by both parties, a second Pre-Hearing Conference was held on May 16, 2000. During this second Pre-Hearing Conference, the Pre-Hearing Officer determined that the two agreed-upon prime issues in this matter were essentially legal in nature and that resolution of threshold questions of law would dictate the direction of this proceeding, and may determine the result of this docket. The Pre-Hearing Officer determined that the decision relative to these legal questions would circumscribe the parties' need for certain disputed discovery responses. To that end, the Pre-Hearing Officer directed that briefs and reply briefs be filed addressing these threshold legal questions, and further determined that resolution of outstanding

discovery disputes be held in abeyance until all briefs were filed and the legal questions raised in this matter were addressed.

In addition to the two previously agreed-upon prime issues, the parties requested to brief certain sub-issues to help clarify their respective positions. After discussion with the parties, the Pre-Hearing Officer allowed for the submission and briefing of such sub-issues for purposes of clarification.<sup>1</sup> The Second Report memorialized the above actions and recommended that the Authority approve them. On May 31, 2000, the Consumer Advocate Division ("CAD") filed an *Objection to Report and Recommendation of Hearing Officer* ("CAD's Objection"). On June 2, 2000, BellSouth Telecommunications, Inc. ("BellSouth") filed a *Response of BellSouth Telecommunications, Inc. to the Consumer Advocate Division's "Objection to Report and Recommendation of Hearing Officer"* ("BellSouth's Response to CAD's Objection"). At the June 6, 2000 Authority Conference, the CAD requested the opportunity to reply to BellSouth's Response to CAD's Objection and made an oral motion to continue the consideration of the Second Report until after filing such a reply. A majority<sup>2</sup> of the Directors granted the CAD's request and motion, and then remanded to the Pre-Hearing Officer the determination of the objection, response, and any subsequent reply. The Pre-

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<sup>1</sup> See the Second Report for the specific sub-issues that were filed by the parties on May 18, 2000.

<sup>2</sup> At the June 6, 2000 Authority Conference, Director Greer voted to approve the Pre-Hearing Officer's Second Report and against the CAD's motion.

Hearing Officer was specifically directed to memorialize such determination in an initial order, and the Pre-Hearing officer entered his Initial Order on July 3, 2000.

The Directors considered the Initial Order during the July 11, 2000 Authority Conference, at which time they heard extensive oral arguments from the parties. After reviewing the Initial Order and hearing the parties' arguments during the July 11<sup>th</sup> Conference, a majority<sup>3</sup> of the Directors reversed certain findings in the Initial Order. The majority also found that the Authority may allow a late-payment charge to be applied to bills for services provided by third parties, and they approved BellSouth's tariff based on BellSouth's agreement to revise the tariff to include an exemption for Lifeline and Link-up customers.

On July 26, 2000 (after the Authority rendered its verbal decision but before it issued its written Order), the CAD filed a "Petition for Stay of Effectiveness" of the TRA's decision, and the following day the CAD filed a "Notice of Filing and Incorporation." The Authority entered its written Order on August 3, 2000. The CAD filed a "Second Petition for Stay of Effectiveness and Petition for Reconsideration" on August 10, 2000, and on August 14, 2000, the CAD filed a "Notice of Filing." BellSouth filed responses to these filings, *see* "BellSouth Telecommunications, Inc.'s Response to Consumer Advocate Division's Petition for Stay" and "Response to Consumer Advocate Division's Second Petition for Stay of Effectiveness and Petition for Reconsideration," and the CAD filed replies to both of

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<sup>3</sup> Director Malone stated that on the record before him, he would vote no.

BellSouth's responses. See "Reply to BellSouth's Response to Tennessee Consumers's (sic) Second Petition for Stay of Effectiveness and Petition for Reconsideration,"<sup>4</sup> and "Reply to BellSouth's Response to Tennessee Consumer's Petition for Reconsideration."

The Authority considered the CAD's Petitions during its regularly scheduled Directors' Conference on August 29, 2000. After hearing oral argument from both parties, the majority of the Directors voted to grant the CAD's Petition for Reconsideration, to deny the CAD's Petition for Stay, and to reach a determination upon reconsideration at a later date. Having carefully reviewed the entire record and carefully considered the controlling law, the Authority finds, as a matter of law, that it has the authority to approve the late-payment charge set out in BellSouth's tariff filing. The Authority also finds, as a matter of law, that the late-payment charge is a charge for a non-basic service.

The CAD has also questioned whether BellSouth has demonstrated its compliance with the statutory cap on its aggregate revenues, which is a question of fact. The CAD, however, did not raise this issue until after the Authority entered its Order. Thus, the issue of whether BellSouth has complied with the statutory cap is not a basis for denying BellSouth's tariff. The Authority, therefore,

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<sup>4</sup> Despite its caption, this document clearly addresses BellSouth's response to the CAD's "Petition for Stay of Effectiveness," and that Petition did not contain a request for reconsideration.

will allow BellSouth to put its tariff into effect immediately, but it will convene a hearing to consider the statutory cap issue.

### **FINDINGS AND CONCLUSIONS**

The tariff filing at issue in this docket increases the late-payment charge in the Private Line Services Tariff and adds a late-payment charge to the General Subscribers Services Tariff.<sup>5</sup> If BellSouth's tariff filing is approved, the pertinent language in both tariffs will provide that:

A late payment charge of three percent (3.00%) of the unpaid balance will be applied to each subscriber's bill (including amounts billed in accordance with the Company's Billing and Collections Services Tariff) when the previous month's bill has not been paid in full prior to the next billing date. Charges for payments that are overdue on state government accounts will be applied consistent with the applicable state statutes.

As a result, a late-payment charge of 3.00% of the unpaid balance of all charges that appear on BellSouth's bill will be applied when the previous month's bill has not been paid in full prior to the next billing date.

In addition to charges for services provided by BellSouth, a bill BellSouth sends to its subscribers may include charges for telecommunications-related services provided by third parties in accordance with the terms and conditions of

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<sup>5</sup> Before BellSouth filed the tariff that is the subject of this docket, BellSouth's Private Line Services Tariff allowed the Company to apply a 1.5% late-payment charge to services provided pursuant to that tariff. See BellSouth's Private Line Services Tariff at B2.4.1.E. BellSouth's General Subscriber Services Tariff did not provide for late-payment charges prior to this filing.

BellSouth's tariffs.<sup>6</sup> *See Generally* General Subscriber Services Tariff A37; Access Services Tariff E8. When BellSouth bills its end users for services provided by third parties, BellSouth purchases the accounts receivable arising from such charges from those third parties and then includes those charges on the bill it sends its own subscribers. *See* Access Tariff at E8.2.1.B.2.g ("[BellSouth] will provide Bill Processing Service only on the condition that it purchase the accounts receivable from the [interexchange carrier] . . . ."); General Subscriber Services Tariff at A37.1.1.B ("[BellSouth] will remit payment to the customer each month based upon the total revenue billed to end users less [BellSouth's] charges, any uncollectibles, and any adjustments."); *Id.* at A37.1.2.E ("Typically, [BellSouth] will be paying out the billed amount to the [third-party service provider] prior to receiving payment from the end user."). The express language of the proposed tariff provides that the late-payment charge will apply to all charges appearing on BellSouth's bill, including third-party charges.

In addition to these late-payment provisions, BellSouth's proposed tariff also reduces the rate for grouping service in Rate Group 5. Pursuant to approved tariffs which have been in effect for many years, BellSouth provides service within five

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<sup>6</sup> Even when it bills for services provided by third parties, BellSouth does not send bills to persons or entities who are not subscribers to BellSouth's service. *See generally*, General Subscriber Services Tariff A37.1.1.A ("In order for [BellSouth] to bill for these services, the end user must be a subscriber of [BellSouth] who receives a monthly telephone bill."); *See also* E8.2.1.B.2.e. Thus any person or entity that receives a BellSouth bill containing charges for service provided by third parties is a BellSouth subscriber.

different Rate Groups. *See, e.g.,* BellSouth's General Subscriber Services Tariff A3.2.1.A (effective since 1991). Rate Group 1 is composed of local calling areas with up to 12,000 lines; Rate Group 2 is composed of local calling areas with 12,001 to 27,000 lines; Rate Group 3 is composed of local calling areas with 27,001 to 85,000 lines; Rate Group 4 is composed of local calling areas with 85,001 to 300,000 lines, and Rate Group 5 is composed of local calling areas with more than 300,000 lines. *Id.*

While all subscribers within a given Rate Group pay the same rates for the same service, the price for a given service varies across rate groups. For example, BellSouth provides flat rate residential service at a monthly rate of \$7.55 within Rate Group 1; \$8.50 within Rate Group 2; \$9.05 within Rate Group 3; \$11.85 within Rate Group 4; and \$12.15 within Rate Group 5. Similarly, even before this filing, BellSouth's rates for its grouping service varied across its five Rate Groups. The rate for hunting in conjunction with an individual line or trunk, for example, was \$20.29 in Rate Group 1; \$23.10 in Rate Group 2; \$24.56 in Rate Group 3; \$29.29 in Rate Group 4; and \$29.78 in Rate Group 5. BellSouth's tariff filing reduces the rates BellSouth will charge for grouping services within Rate Group 5. Under this tariff, therefore, all of BellSouth's customers in Rate Group 5 will pay the same, lower rate for hunting.

Finally, BellSouth's tariff filing package includes proprietary information which sets forth the aggregate annual revenue increase resulting from the late-



payment charge provisions in its tariff. This package also sets forth the aggregate annual revenue reduction resulting from the grouping reductions. This package indicates that after taking these changes into effect, the aggregate revenues generated by the rates BellSouth charges for its telecommunications services is less than the revenue that would be generated by the maximum rates permitted under BellSouth's approved price regulation plan. See T.C.A. §65-5-209(e).

### **THE CAD HAS BEEN PROVIDED DUE PROCESS**

The CAD claims that the Authority denied the CAD due process because it "had no notice that the TRA intended to decide all issues of the case nor any opportunity to marshal a defense." See Reply to BellSouth's Response to Tennessee Consumers' Second Petition for Stay of Effectiveness and Petition for Reconsideration at 5. The Authority notes, however, that prior to the Authority's verbal ruling on the Initial Order, the CAD had filed two briefs addressing both of the agreed-upon legal issues in this docket. Additionally, the CAD was (or should have been) aware that when the Authority reviews an initial order, it "must personally review the relevant portions of the administrative record, and then it must reach its own decision." *Jackson Mobilphone Co. v. Public Service Commission*, 876 S.W.2d 106, 111 (Tenn. Ct. App. 1994). See also T.C.A. §65-2-111 (addressing the Authority's review of initial orders and stating that "before the authority shall enter a final order in such cases, the members thereof shall personally consider the entire record . . . and shall make its decision in the form

and manner prescribed by this chapter for decisions in contested cases."). Prior to deliberating the Initial Order and entering its Order in this docket, the Authority thoroughly reviewed the entire record -- including the CAD's two briefs addressing the agreed-upon legal issues in this docket -- and rendered its own decision. The CAD, therefore, was not denied due process.

Even if the CAD had been denied due process at that point in the proceedings, however, any such denial was subsequently remedied. In *Phillips v. Board of Regents*, 863 S.W.2d 45, 50 (Tenn. 1993), the Tennessee Supreme Court cited a United States Supreme Court decision for the proposition that "due process is flexible and calls for such procedural protections as the particular situation demands." Noting that "[e]laborate procedures at one stage may compensate for deficiencies at other stages," *Id.*, the Court rejected claims that a notice of hearing was insufficient by stating that:

We do not deem it necessary to decide whether the documentation attached to the letter was sufficiently specific to satisfy due process at that early stage of the procedure because we conclude that sufficient notice of the specific details of the allegations supporting the charge was provided, at least by the time of the de novo hearing in Chancery.

*Id.* at 50.

As noted above, there was no denial of due process in the first instance. Even if there had been, however, any deficiency in the proceedings prior to the entry of the original Order have been more than remedied. Since the Order was entered, the Authority has received and reviewed no less than five filings in which

the CAD has fully addressed the issues it wished to present for the Authority's consideration.<sup>7</sup> The CAD also presented oral argument on these issues during the August 29, 2000 Directors' conference. The CAD, therefore, has had ample notice that the Directors would consider the merits of BellSouth's tariff, particularly since the CAD addressed these merits in two filings before entry of the Order and in five filings after entry of the Order. Clearly, due process has not been denied.

**THE AUTHORITY HAS THE STATUTORY AUTHORITY  
TO APPROVE A LATE-PAYMENT CHARGE THAT APPLIES TO  
CHARGES FOR SERVICES PROVIDED BY THIRD PARTIES  
AND BILLED BY BELL SOUTH**

Although it is the second of the two agreed-upon issues, the Authority will first address its statutory authority to approve a BellSouth tariff which implements a late-payment charge that will apply to charges for services that are provided by third parties and billed by BellSouth. In *Sanifill of Tennessee, Inc. v. Tennessee Solid Waste Disposal Control Board*, 907 S.W.2d 807, 809 (Tenn. 1995), the Supreme Court of Tennessee stated that the "issue of whether the Tennessee statutory scheme expressly or implicitly grants authority to the Department [of Environment and Conservation] to regulate the service area from which a solid waste disposal facility may receive solid waste is a question of law, not of fact . . . ." Similarly, the question of whether the Authority has the statutory

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<sup>7</sup> See Petition for Stay of Effectiveness; Notice of Filing and Incorporation; Second Petition for Stay of Effectiveness and Petition for Reconsideration; Notice of Filing; Reply to BellSouth's Response to Tennessee Consumers's (sic) Second

authority to approve a late-payment charge that applies to "third-party charges" is a question of law, and the TRA determines that it has such authority.

The TRA has general jurisdiction over public utilities like BellSouth, and it has the authority to approve tariffs that are binding on BellSouth and its customers.<sup>8</sup> *See GBM Communications, Inc. v. United Inter-Mountain Tel. Co.*, 723 S.W.2d 109, 112 (Tenn. Ct. App. 1986) ("The published tariffs of a common carrier are binding upon the carrier and its customers and have the effect of law. The provisions of the tariffs should govern the parties."). Thus, the TRA has the authority to approve tariffs governing the manner in which BellSouth's end users must pay their bills, *see* BellSouth's Tennessee General Subscriber Services Tariff at A2.4.3 ("Payment for Service"), and this authority extends to third-party charges appearing on BellSouth's bills.

In fact, the Authority and its predecessor, the Public Service Commission, have exercised such authority over local exchange companies for years. BellSouth, for example, is authorized to require deposits which are, in whole or in part, based on charges for toll services that are provided by other companies. *See, e.g.*, BellSouth Tennessee General Subscriber Services Tariff A2.4.2.A (permitting deposits in an amount "equal either to the charge for two months' local service or

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Petition for Stay of Effectiveness and Petition for Reconsideration; and Reply to BellSouth's Response to Tennessee Consumer's Petition for Reconsideration.

<sup>8</sup> As noted above, even when it bills for services provided by third parties, BellSouth does not send bills to persons or entities who are not subscribers to

the charge for the estimated toll messages during a like period, or both.").

Moreover, the "Regulations for Telephone Companies" provide that "[s]ervice may be refused or discontinued . . . for non-payment of bill," Rule 1220-4-2-.12(1)(e), and local service may be disconnected even for non-payment of certain amounts billed on behalf of third parties. *See, e.g.,* United Telephone-Southeast's General Subscriber Services Tariff U2.2.10.c.2 (allowing the suspension, termination, or disconnection of local service for "[n]on-payment of any sum due for exchange, long distance or other services, except for '900' services."); BellSouth's Tennessee General Subscriber Services Tariff A2.2.10.A.5 (allowing the suspension, termination, or disconnection of local exchange services for non-payment of charges for long distance service). Finally, even before this filing, BellSouth's Private Line tariff provided for a 1.5% late-payment charge that applied "to each subscriber's bill (including amounts billed in accordance with the Company's Billing and Collection Services Tariff) when the previous month's bill has not been paid prior to the next billing date." *See* Private Line Services Tariff at B2.4.1.E. Permitting a local exchange company to take certain actions on the basis of an end user's failure to pay third-party charges appearing on its local bill, therefore, is something the Authority and its predecessor have done for years.

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BellSouth's service. Thus, any person or entity that receives a BellSouth bill containing charges for service provided by third parties is a BellSouth subscriber.

The CAD relies on section 65-4-125(b) in arguing that the Authority does not have jurisdiction to approve the late-payment provisions in BellSouth's tariff. The Authority finds that such reliance is misplaced. Section 65-4-125(b) provides that:

No telecommunications service provider, and no person acting on behalf of any telecommunications service provider, shall bill and collect from any subscriber to telecommunications services any charges for services to which the provider or person acting on behalf of the provider knows or reasonably should know such subscriber has not subscribed, or any amount in excess of that specified in the tariff or contract governing the charges for such services.

The CAD first claims that BellSouth's tariff violates this statute by permitting BellSouth to charge for a service it knows or should know a subscriber has not ordered. This statute, however, authorizes the Authority to "adopt rules implementing the provisions of this section," *see* T.C.A. §65-4-125(d), and the Authority has promulgated rules which apply to BellSouth and which are designed to ensure that all charges appearing on the bill -- including charges for services provided by third parties -- are authorized. *See* T.R.A. Rule Chapter 1220-4-2-.58.<sup>9</sup> The CAD also claims that BellSouth's tariff violates this statute by allowing

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<sup>9</sup> The CAD also seems to argue that this statute would require BellSouth to take steps to ensure not only that a subscriber has ordered a particular service, but also that the subscriber has specifically agreed to pay the new tariffed late-payment charge with regard to that service. This argument is not persuasive. Once it has been confirmed that a subscriber has ordered a service, all charges, terms, and conditions set forth in the tariff apply. *See GBM Communications, Inc. v. United Inter-Mountain Tel. Co.*, 723 S.W.2d 109, 112 (Tenn. Ct. App. 1986) ("The published tariffs of a common carrier are binding upon the carrier and its customers and have the effect of law. The provisions of the tariffs should govern the parties.").

BellSouth to charge an amount in excess of that specified in the tariff. This is a perplexing argument, however, given that once approved, the late-payment charge will be specified in BellSouth's tariff.

Based on the foregoing, the Authority finds as a matter of law that it has the statutory authority to approve a late-payment charge that will apply to the unpaid balance -- including amounts billed in accordance with the Company's Billing and Collections Services Tariff -- when the previous month's bill has not been paid in full prior to the next billing date.

#### **PRICE REGULATION PLAN**

The CAD has urged the Authority to find that BellSouth's late-payment charge is a charge for a telecommunications service and, therefore, that the charge is subject to the provisions of the price regulation statutes. If the service is not a telecommunications service, the revenue from such service would not be subject to the revenue cap established by the price regulation statutes. On the other hand, if the late-payment charge is a charge for a telecommunications service, any revenue generated by the charge will be considered in determining whether the rates charged by BellSouth are in compliance with the cap established by the price regulation statutes. Given that the charge is applied by a telecommunications company to the unpaid balances on a bill rendered by a telecommunications service provider pursuant to telecommunications tariffs, the Authority has determined that the late-payment charge is a charge for a telecommunications service.

The Authority must now determine whether the late-payment charge is a charge for a basic service (in which case the freeze on basic local exchange telephone service rates is in effect) or a charge for a non-basic service. The definitions for basic and non-basic services are established by statute, *see* T.C.A. §65-5-208(a), and the interpretation of a statute is a matter of law. *See Cape Fear Paging Co. v. Huddleston*, 937 S.W.2d 787, 788 (Tenn. 1996)("The construction of statutes and of regulations promulgated pursuant to statutes and the application of those statutes and regulations to undisputed facts are questions of law.").<sup>10</sup> Section 65-5-208(a)(1) defines basic services as being comprised of an exclusive list of elements, and the Authority finds that the late-payment charge is not a charge for any element listed in this section. Additionally, customers who order basic service after this tariff is approved will be billed the exact same rates for those services as they were billed for those services before the tariff was approved. Finally, unlike the tariffed rate for a basic service -- which a subscriber is required to pay in order to receive the service -- the late-payment charge is a charge that every customer in the state can avoid by simply paying their bills on or before the date their next bill is calculated. The Authority, therefore, finds as a matter of law that the late-payment charge in BellSouth's tariff is a charge for a non-basic service.

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<sup>10</sup> The language of BellSouth's tariff is plain and unambiguous: the late-payment charge will apply to any unpaid balance when the previous month's bill



BellSouth is an incumbent local exchange company subject to price regulation, and section 65-5-209(h) provides that with certain exceptions that do not apply in this docket, such a company "may set rates for non-basic services as the company deems appropriate subject to the limitations set forth in subsections (e) and (g)"<sup>11</sup> . . . ." Subsection (e), in turn, allows BellSouth to "adjust its rates for basic local exchange telephone services or non-basic services" as long as "its aggregate revenues for basic local exchange services and non-basic services generated by such changes do not exceed the aggregate revenues generated by the maximum rates permitted by the price regulation plan." T.C.A. §65-5-209(e). As noted above, BellSouth's tariff filing package indicates that after taking into account the revenue effect of this tariff, its aggregate revenues do not exceed the aggregate revenues generated by the maximum rates permitted by its approved price regulation plan.

Although the CAD now claims that "the actual value of the hunting charge reductions and the actual value of the late charge payments are questions of fact not resolved by the August 3, 2000 Order," the Authority notes that the CAD did not contest the information set forth in BellSouth's filing in its Complaint or in the briefs it has filed in this docket. Additionally, the CAD has not submitted

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has not been paid in full prior to the next billing date. Application of the price regulation statutes to this plain and unambiguous language is a matter of law.

<sup>11</sup> Subsection (e) applies only to rates for interconnection services provided by BellSouth to other telecommunications services providers. BellSouth's tariff does not apply to interconnection services.

affidavits, studies, or any other evidence raising an issue about this information. Having not even alleged that BellSouth has violated the price cap, it seems odd that the CAD should now be heard to complain that the Authority has accepted BellSouth's uncontested filing in this matter.

Nevertheless, in an abundance of caution, the Authority will hold a hearing on the sole factual issue of whether BellSouth has complied with the revenue cap set forth in the price regulation statutes. Given the CAD's complete failure to raise this issue prior to the Authority's decision to approve BellSouth's tariff, the Authority will allow BellSouth to place the tariff into effect pending the outcome of this hearing. To do otherwise arguably would set the stage for a company's tariff to be substantially delayed by the belated filing of a complaint alleging questions of "fact" regarding the filing.

### **DISCRIMINATION**

The CAD suggests that BellSouth's reduction of grouping rates is discriminatory, apparently because the grouping rate reductions apply only within Rate Group 5. As noted above, however, the Authority and its predecessor, the Public Service Commission, have historically approved the establishment of different rates within each of BellSouth's five rate groups.<sup>12</sup> There is nothing discriminatory about this practice, and the CAD has presented nothing to convince

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<sup>12</sup> As noted above, before BellSouth filed this tariff, customers in Rate Group 5 paid different hunting rates than customers in Rate Groups 4, 3, 2, and 1.

the TRA otherwise. *Cf. Consumer Advocate Division v. Greer*, 967 S.W.2d 759, 761 (Tenn. 1998)("a state agency's interpretation of a statute that the agency is charged to enforce is entitled to great weight in determining legislative intent.").

**IT IS THEREFORE ORDERED THAT:**

1. To the extent that it found that BellSouth's late-payment charge is a charge for a basic service, the Initial Order of the Pre-Hearing Officer is reversed, based upon the legal conclusion that BellSouth's late-payment charge is a charge for a non-basic telecommunications service as defined in Tenn. Code Ann. § 65-5-208(a)(2);

2. Pursuant to this tariff BellSouth may apply late-payment charges for services provided by third parties/other telecommunications companies for which it bills;

3. The BellSouth tariff is approved, as amended to exempt Lifeline and Link-up customers from the three percent (3%) late-payment charges;

4. BellSouth may place the tariff into effect on or after October 1, 2000, pending the Authority's findings in the hearing described in Paragraph 5 below;

5. The Authority will hold a hearing on the factual issue of whether BellSouth has complied with the revenue cap set forth in the price regulation statutes;

6. The CAD's Petition for Stay is denied;

7. Any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from the date of this Order; and

8. Any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

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Sara Kyle, Chairman

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H. Lynn Greer, Jr., Director

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\* \* \*  
Melvin J. Malone, Director

ATTEST:

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K. David Waddell, Executive Secretary

\* \* \* Director Malone voted against the prevailing motion.

**CERTIFICATE OF SERVICE**

I hereby certify that on September 8, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☒ Mail
- ☒ Facsimile
- ☐ Overnight

L. Vincent Williams, Esquire  
Office of Tennessee Attorney General  
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*Patricia Tume*

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